IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5927 of 2003

For Approval and Signature:

HONOURABLE MR. JUSTICE B.J.SHETHNA
HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BL SHARMA - Petitioner(s)
Versus
COMMANDANT, C I S F UNIT & 1 - Respondent(s)

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Appearance :
MR ANAND SHARMA for MRS MADHUBEN SHARMA for Petitioner(s) : 1,
NONE FOR THE RESPONDENTS

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CORAM : HONOURABLE MR. JUSTICE B.J.SHETHNA

and

HONOURABLE MR.JUSTICE MD SHAH

Date : 13/10/2006

ORAL JUDGMENT

(Per : HONOURABLE MR. JUSTICE B.J.SHETHNA)

Heard learned counsel Shri Anand Sharma for the petitioner.

The petitioner was serving as Ex-ASI/Exe (No.724480557) in CISF Unit, IOC(GR), Vadodara. He was served with the charge-sheet dated 3.8.2000 for violating the Unit order by keeping Rs.260/- illegally in his pocket. On conclusion of inquiry, the Disciplinary Authority passed an order of compulsory retirement from service on the basis of the inquiry Report submitted by the Inquiry Officer.

Though the remedy of departmental Appeal and Revision were available to the petitioner, he preferred to directly approach this Court by way of Special Civil Application No.11281 of 2002. On that day the petitioner withdrew the petition from the Division Bench of this Court. While permitting the petitioner to withdraw his earlier petition the Division Bench of this Court directed the respondent Authority to treat that petition itself as Appeal and decide the same within four weeks. As per the direction of this Court the Appellate Authority, after hearing the petitioner, dismissed the Appeal by its impugned Order dated 28.3.2003 (Annexure : A). On that very day i.e. on 28.3.2003 the impugned Notice dated 28.3.2003 came to be issued for vacating the Quarter (Annexure : B). Hence, this petition.

What is prayed in this petition in Para : 10(A)is that the respondent be directed to withdraw the order of compulsory retirement dated 11.11.2002 and the impugned Notice of eviction dated 28.3.2003. The impugned order of compulsory retirement dated

11.11.2002 passed by the respondent Authority is not produced on record. Without producing the order on record the same cannot be challenged. Thus, only on this ground the petition is required to be dismissed. Surprisingly, what is annexed to this petition is the order dated 28.3.2003 (Annexure : A) passed by the Appellate Authority i.e. Deputy Inspector General (WZ), CISF, but no formal prayer is even made in the petition. It can only be said that this is the best example of poor drafting. Be that as it may.

From the order at Annexure : A passed by the Appellate Authority it is clear that though the remedy of revision was available to the petitioner he had not availed said remedy and straightway approached this Court by way of this petition as he has done on an earlier occasion when the Disciplinary Authority passed an order he straightway approached this court without availing the remedy of Appeal and Revision.

Though the order dated 11.11.2002 of compulsory retirement passed by the Disciplinary Authority is not produced on record it is clear from the Appellate Order (Annexure : A) that amount of Rs.260/- was recovered from the petitioner which was in clear violation of order passed by the Authority. The defence of the petitioner was that he kept money for the treatment of his ailing son. If he had at all kept the said money for the treatment of his ailing son, there was no reason for him not to declare the same while mounting on duty. The record shows that he had declared Rs.10/- in his possession, whereas the

total amount of Rs.260/- was recovered from him by the officer.

Shri Sharma for the petitioner, however, submitted that the Authority had wrongly drawn inference against the petitioner merely because each note found from the petitioner was wrapped in separate polythene bags. It was found from the petitioner in suspicious circumstances. Fact remains that he had disclosed only Rs.10/- whereas Rs.260/- found from him at the time of checking. Only reasonable inference in such type of cases can be drawn that he must have got the said amount by way of illegal gratification.

In view of the above discussion, we do not find any substance in this petition. Accordingly, this petition fails and is hereby dismissed. Rule discharged with no order as to costs. Ad. interim relief, granted earlier, shall stands vacated.

(B.J.SHETHNA,J.)

(M. D. SHAH, J.)

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